CRIMINAL APPEAL(D.B.) No.373 OF 1988

Against the judgment and order dated 27th May, 1988 passed by Sri Chakra Dhar Rai, Addl. Sessions Judge IX, Patna in Session Trial No.1092 of 1986.

Krishna Singh ------- Appellant.

Versus

The State of Bihar ------- Respondent.

For the Appellant : Mrs.Anjana Prakash,Sr.Advocate,
Mr. Shivendra Kumar Sinha,
Mr. Rakesh Kumar Sinha No.I.
For the State :Mr. Lala Kailash Bihari Prasad, P.P.

P R E S E N T

THE HON'BLE MR. JUSTICE SUDHIR KUMAR KATRIAR

THE HON'BLE MR. JUSTICE SAMARENDRA PRATAP SINGH

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S.K. Katriar
&
S.P. Singh,JJ. The sole appellant challenges the judgment and order dated 27.5.1988, passed by the learned Additional Sessions Judge IX, Patna, in S.T. No. 1092 of 1986 (State Versus Krishna Singh), whereby he has been convicted under section 302 of the Indian Penal Code; and has been sentenced to undergo rigorous imprisonment for life.

2. According to the Fardbeyan of one Baleshwar Prasad (P.W.1), recorded on 25.9.1986 (Ext.1), that he had on the previous day, i.e. 24.9.1986, at about 8 A.M. learnt from his college going son that Sheela Kumari (wife of the appellant), the daughter of the informant, has been administered poison and

she has been taken to Patna for treatment. The informant then immediately got ready and reached Nalanda Medical College and Hospital Patna , where he found the appellant with two persons. On seeing the informant, the appellant took to his heels. On enquiry, he found the dead body of Sheela Kumari on the Verandah of the Hospital. He also found Jugeshwar Prasad, the brother of the appellant, and a police functionary. He felt certain that poison had been administered by the husband. He had been demanding a Scooter from him which he was unable to give. The appellant had been beating up Sheela Kumari and harassing her to obtain Scooter by way of dowry from him. He is also in league with un-social elements.

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2.1) In view of these allegations, Alamganj police station forwarded the Fardbeyan to Dhanarua police station, where it was instituted as Dhanarua P.S. Case No.120 of 1986, dated 30.9.1986, under section 302 of the Indian Penal Code. The same has been marked as Ext.5. Fardbeyan was marked as Ext.1 during the course of the trial. The Fardbeyan was initially registered as U.D. case No.6 of 1986, dated 29.9.1986, at Dhanarua police station, on the statement of the appellant. The same was ultimately registered as Dhanarua P.S. Case No.120 of 1986,

dated 30.9.1986, under section 302 of the Indian Penal Code. The F.I.R. was marked as Ext.5.

3. Investigation commenced and charge sheet was submitted against the appellant.

4. The learned Sessions Judge, Patna, framed the charges under section 302 of the Indian Penal Code for administering poison to Sheela Kumari with the intention to commit her murder, mainly because a Scooter was not given to him in dowry. He pleaded not guilty and claimed to be tried.

5. The prosecution examined seven witnesses. The defence did not examine any witness. On a consideration of the materials on record, the learned Addl. Sessions Judge IX, Patna, found that the appellant had administered poison to Sheela Kumari, because scooter was not given to him in dowry in spite of persistent demand leading to her death. He has further found that he had been beating her up and harassing her. He has also found that the appellant was of a criminal bent up mind, and has convicted him under section 302 of the Indian Penal Code. He was sentenced to rigorous imprisonment for life.

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6. P.W.1, Baleshwar Prasad, is the father of the deceased. He has stated in his examination-in-chief that his daughter, Sheela Kumari,was married to the appellant 6-7 years ago and was living with

her husband. On 24.9.1986, at about 8 A.M., his college going son had informed him that the appellant had administered poison to the deceased and had been taken to a Hospital in Patna. He immediately left for Patna at about 10 A.M., and reached Nalanda Medical College and Hospital where he found the appellant alongwith others at the hospital gate. As soon as the appellant sighted P.W.1, he took to his heels as a result of which they could not have any conversation. Other persons standing with him also left the place. He found the dead body of Sheela Kumari on the hospital Verandah. A police functionary and Jugeshwar Prasad, elder brother of the appellant were standing there. Though the police functionary had talked to him and made an enquiry from him, the appellant's brother did not talk to him at all. By looking at the dead body, he felt certain that she had been done to death by the appellant by administering poison. He had made Fardbeyan in his own writing with Alamganj police station which was marked as Ext.1. The dead body was handed over to him after completion of the post-mortem. He had noticed in the hospital register that the appellant had registered his name as Binay Singh, the husband of Sheela Kumari. Krishna Singh was never known by the name of Binay Singh. He had

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received the dead body and had performed the last rites of cremation.

6.1) He has further stated in his examination-in-chief that the appellant had demanded a motor cycle from him at the time of the wedding and Roksadi which he was unable to give. The appellant used to beat his daughter because the motor cycle had not been given to him. She used to complain of the same to her brother on his visits. She used to send letters through her brother; Ram Kumar(P.W.3). She had informed P.W.1 that he was pressurizing her for the motor cycle and she used to weep with her father to provide the motor cycle, failing which she will lose her life. He proved two letters received from her marked as Exts. 2 and 2/1. Two-three days prior to the occurrence, his son (P.W.3) had gone over to his sister's place alongwith gifts. She had given a letter which was marked Ext. 2/2. He has further stated in his examination-in-chief that his son-in-law was maintaining and spending a lot on a kept woman as a result of which the relationship with his daughter was very strained. He was unaware of her name. His daughter used to object to the same. He had know of the same from his daughter.

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He has stated in his cross-examination that the accused persons are five brothers including Chandeshwar Prasad who is in service somewhere. He

has further stated that he has gone over to Nalanda Medical College and Hospital alongwith his wife. He was followed by his father. He has further stated in his cross-examination that he had noticed the appellant at the hospital gate and had immediately run away. Jugeshwar Prasad, the appellant's brother, was also present at the time of post-mortem. He alongwith his father and brother had taken away the dead body. The post mortem had taken place on 24th evening. She was cremated on 25th. The Fardbeyan was handed over to Alamganj police station on 25th. He himself alongwith his father (P.W.2), and his brother, were present at the time of cremation . Jugeshwar Prasad had gone to burning Ghat for the sake of formality after cremation was over. He has denied the suggestion that Krishna Singh was also known as Binay Singh. He has also stated that the appellant had registered his father's name correctly, but his own name incorrectly. He had earlier seen marks of beating and assault on the body of his daughter but had not taken steps for treatment or of giving information to the police. Sheela Kumari was not unhappy because she had no child but she was unhappy because of her husband's conduct and behaviour. She had read up to class 6 or 7. He had seen the appellant's kept woman once but had not talked to her. His daughter on a number of

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occasions asked her husband not to give money to his kept woman.

7. P.W.2, Dhaneshwar Prasad, is a cultivator and was the grand-father of the deceased. He had deposed to the effect that his grand-daughter was married to the appellant five years ago. The Roksadi had taken place after one year of the wedding, thereafter she had started living in her Sasural at Asrafganj. The appellant had demanded a motor cycle at the time of the wedding. He and his son were unable to give the same and the appellant, therefore, used to harass and assault his grand-daughter. He has also stated that his grand-son, Ram Kumar (P.W.3), used to visit her and would return with the information that she was being assaulted by the appellant because motor cycle was not given to him. She used to send letters to him and used to threaten that she would be killed. The three letters marked Exts.2, 2/1 and 2/2, were shown to him in the witness box and he recognized the hand writing of her grand-daughter. He has also stated that his son had gone over to Nalanda Medical College and Hospital after his grand-son had informed him on 24.9.1986. He had reached Patna the same day when post-mortem was being done. The dead body was handed over to his son (P.W.1) after the post mortem. None from the appellant's side was present there. She was cremated

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at Gulbi Ghat at Patna. He had not seen the appellant till the time of cremation. The appellant's brother had gone to cremation Ghat. He stated in his cross-examination that she had come over to her Naihar 3-4 times after her Roksadi. The appellant's house at Asrafganj was at about three miles from the house of P.W.2. After the wedding, the appellant had visited his Sasural only once i.e. at the time of Roksadi. His grand-son, Ram Kumar(P.W.3), is eye witness to the assault. Ram Kumar repeatedly used to inform him about the assault. She used to inform her Naihar people about the assault whenever she visited her Naihar. After he had received the letters from Sheela Kumari, he had asked P.W.1 to get her back from the Sasural but he had not followed his advice.

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8. P.W.3 is Ram Kumar, aged 12 years, and a student of Class V, at the time of his deposition on 23.6.1987. He is full brother of the deceased. He had gone over to her Sasural at Asrafganj 2-3 days prior to her demise which was the day of Karma festival. He had gone there with fruits and had gone alone. He had stayed one day at his sister's place and returned on the following day. While returning, his sister had given to him a letter for their father. She had told him to tell their father to provide motor cycle to the appellant. He has further

deposed to the effect that the appellant used to beat up his sister for the motor cycle. He had handed over the letter to his father addressed to him and was marked Ext.2/2. The same was in the hand writing of his sister which he recognized. The letters marked as Exts. 2 and 2/1 were shown to him and he recognized the hand writing of his sister.

He has stated in his cross-examination that he had gone over to his sister's place at Asrafganj on 24.9.1986. He used to go over to his sister's place quite often. He used to go there once in a month. His sister after marriage had come to her Naihar 2-3 times on the occasion of wedding in the family. She did not visit to her Naihar for festivals. She had once come for the marriage of our 'Phua'. She had not come in the marriage of Urmila, their younger sister. He has further stated in his cross-examination that he had himself never seen the appellant beating his sister. She had informed him about the same. She had written three letters to her Naihar. The same were not written in his presence, nor he had read the letters. His sister had studied in Sanda School. When he had gone over to his sister's place on the day of Karma festival, the appellant was not there. Only his sister and mother-in-law were there. She was doing the entire house-hold work, domestic work inside the house, and out-

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doors also. The sweeping job was also done by her. He had handed over the letter to his father, and had also informed him of his sister's message that motor cycle should be given to the appellant.

9. P.W.4 is Ashok Kumar, and is the son of P.W.1(Baleshwar Prasad). He has stated in his examination-in-chief that Sheela Kumari was his elder sister. On 24.9.1986, when he was going to his college, he was informed by a boy that the appellant had administered poison to his sister. The boy was from Asrafganj and P.W.4 was not aware of his name but recognizes him. He had met him in front of the college. He has stated that he had informed his father soon thereafter who immediately left for Patna at 9 A.M. He was informed by the people of the village that his sister had died and had been taken to Patna. He, his grand-father(P.W.2), and Uncle (not examined), had reached Patna at about 4 P.M., the same day, and had gone to Nalanda Medical College and Hospital. He had learnt from his father that the post-mortem on the dead body of his sister was being done, whereafter the same was handed over to their father. The dead body was cremated in the absence of the appellant. He had never met the appellant thereafter. They returned to the village after cremation. He had noticed the police in the hospital.

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He has stated in his cross-examination that Chandrashekhar alias Bindeshwari Singh is elder brother of the appellant. He used to go over to Asrafganj to meet his sister once every 2-3 months. She used to go over to her Naihar on occasions of wedding. She used to write letters to her Naihar. He had once stayed over night at Asrafganj. Her sister and mother-in-law used to do house-hold work. She was married about 6-7 years prior to her demise. She had no child. She was beautiful. She was not aware whether or not she was dejected because she had no child. She was not afflicted by any ailment. He had not seen the dead body. He had stayed over a night at Patna. Uncle had reached the following day. After reaching his village, he had informed the mother about the demise of her sister. His father (P.W.1) had signed on the requisite papers in the hospital before the dead body was made over to him. They had performed the last rites of cremation. They were confident that his sister had died on account of poisoning. Jugeshwar, brother of the appellant, was present at the time of cremation. His grand-father had brought money for the purpose of cremation. He did not remember whether or not Jugeshwar had brought burial cloth (कफन).

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10. P.W.6 Sidheshwar Sharma, was a lab technician in the department of Forensic Medicine, Nalanda

Medical College and Hospital, Patna. He is a formal witness. He has stated in his examination-in-chief that he was working in the hospital from 1979. Dr. Rajesh Sinha was tutor from 1986 in the Department of Forensic Medicine in Nalanda Medical College and Hospital. He had left for a foreign country in 1987. He is not likely to return in future. He had seen Dr. Rajesh Sinha conducting the post mortem. He recognizes his hand writing and signature. The post-mortem report is in his hand- writing, and also bears his signature. The same has been marked Ext.3.

He has stated in his cross-examination that the post-mortem on the dead body of the deceased had taken place in his presence. He was present because he was lab technician. He had to be present at the time of post-mortem. He was unable to produce any paper showing allotment of duty to be present at the time of post-mortem. He was unable to remember the time when the dead body had come, and time when the post-mortem had taken place. Dr. Rajesh Sinha functioned in the hospital from 1983 to 12.8.1987. He had left for United Kingdom on 12.8.1987. He had seen him off. He had denied the suggestion that the post-mortem had not taken place in his presence.

11. P.W.6 is Rejendra Sharma and was a ward attendant in Naland Medical College and Hospital. He proved the register of the hospital maintained in

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regular course of business. Sheela Kumari was admitted in the hospital on 23.9.1986, at 10 A.M. The entry was in the hand writing of Dr. U. Sharma . He recognized his hand writing which has been marked Ext.4.

He has stated in his cross examination that he did not know or recognize Sheela kumari from before. He was allotted duty in the ward. He is not concerned with admission of patients. Ext.4 was not written in his presence. He was unable to remember his duty hour on 23.9.1986.

12. P.W.7 is Chandrika Prasad. He was posted as Officer Incharge of Dhanarua police station on 30.9.1986. He had received written report from Alamganj police station at about 6 P.M. on that day. The same has been marked Ext.1, on the basis of which a formal F.I.R. was drawn. The same was in his signature and also bears his signature, and marked Ext.5. The inquest report was also received. The same is in the hand writing of Assistant Inspector of Police Alamganj police station and has been marked Ext.6. He had then informed Baleshwar Prasad, the informant. He proceeded to the place of occurrence and had inspected the same. He has given the description of the appellant's house. He had recorded the statements of Ram Kumar (P.W.3), Ashok Kumar (P.W.4) and Dhaneshwar Prasad (P.W.2). He had

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also received the post-mortem report. Baleshwar Prasad had shown to him two letters during the course of investigation and has stated that the same was in the hand writing of the deceased. He has submitted the charge-sheet after concluding the investigation.

He has stated in his cross-examination that he had not recorded the statement of Mukti Nath Singh during the course of investigation. He had further deposed to the effect that he had not gone over to Nalanda Medical College and Hospital to record the statement of the Doctor nor he had examined any document there. It was earlier registered as U.D. case. He had not recovered any suspicious item like poison in the appellant's house. He has further stated that he had, during the course of investigation, recorded statement of Basudeo Yadav, Bhulan Yadav, Dukhit Yadav, Hafij Mian and Mohan Saw. They had stated that Sheela Kumari was vomiting on way to Barni and thereafter to Nalanda Medical College and Hospital. They had been called by the appellant and brother Sadhu Prasad to take her to the hospital. He has further stated that he had recorded the statement of Sarju Saw, Deo Kumar Prasad, Deoki Prasad, and Jageshwar Prasad. They had also stated that she was vomiting on way to Barni and thereafter to hospital.

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13. The following documents have been proved by the prosecution witnesses:

(i) Ext.1- Fardbeyan written by P.W.1.

(ii) Ext.2,2/1 and 2/2- letters written by Sheela Kumari to her father.

(iii) Ext.3- Post-mortem report

(iv) Ext.4-Emergency register of N.M.C.H.

(v) Ext.5- F.I.R.

(vi) Ext. 6- Inquest report.

14. The learned Sessions Judge took care to put different questions to the appellant in terms of section 313 of the Code of Criminal Procedure, explaining to him the circumstances which had appeared against him in the evidence. He denied the same and claimed innocence.

15. The defence did not examine any witness in support of its case.

16. On a consideration of the materials on record and submissions of the parties, the learned trial court found that ever since his marriage, the appellant had been demanding a motor cycle by way of dowry. The Naihar people of the deceased were unable to provide the same to him because of poverty. This has resulted sever ill treatment to the deceased including physical assault. He has further found that the appellant was a criminal-minded person. He had administered poison to Sheeal Kumari, had taken

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her to the hospital alongwith other persons where she was brought dead. The post mortem was conducted whereafter the dead body was handed over to her Naihar people who had performed the last rites of cremation as well as the Shradh at her Naihar. The appellant and his relation had taken her to the hospital whereafter the appellant made themselves scarce and did not participate in the cremation. The dead body was delivered in the hospital to, and the last rites of cremation was performed by, the Naihar people. The learned trial court further found that she had died because the appellant had administered poison to her, and also because motor cycle had not been given to him by way of dowry by his Sasural people. The appellant has, therefore, been convicted under section 302 of the Indian Penal Code, and sentenced to undergo rigorous imprisonment for life.

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17. Learned counsel for the appellant has submitted that it is a case of circumstantial evidence and the links have not been convincingly established. In her submission, the prosecution has proved the following which do not incriminate the appellant: (i) The appellant is the husband of the deceased, (ii) She died in the hospital, and (iii) torture has also not been convincingly proved. She has further submitted that the prosecution has not been able to prove that she had died on account

of poisoning. The Doctor who conducted the post-mortem has not been examined. She has relied on section 45 of the Evidence Act as well as section 294 of the Code of Criminal Procedure. In her submission, the court has to form opinion on the basis of the expert opinion, not on the medical report. The contents of the medical report can not be admitted into evidence because the same was not proved by the appropriate person and, therefore, the court was unable to form any opinion as to the reason for the death. She has further submitted that there is no medical corroboration of the allegation that she was poisoned to death, particularly in absence of non-examination of the Doctor and chemical examination. She next submits that even if motive is proved, it can not be led to the guilt of the accused. She has further submitted that there was delay in reporting the case. The F.I.R. reached the court very late which giving rise to suspicion of cooking up a false prosecution case.

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18. Learned Public Prosecutor has relied on the provisions of sections 32 and 45 of the Evidence Act and also on the provisions of section 294 of the Code of Criminal Procedure. He has submitted that all the documents have been included in the list of documents on behalf of the prosecution and marked as exhibits without any objection. He next submits that

the document as well as its contents will be deemed to have been proved. In his submission, in such a situation, the only contention available to the appellant is as to the adequacy of the evidence. The same was proved by P.W.5, which is adequate compliance of the law. He has placed reliance on the judgment reported in 1972 S.C.C. 608(P.C. Purushothama Reddiar V. S Perumal). He further submits that in view of the oral as well as documentary evidence, the motive on the part of the appellant to kill Sheela Kumari has been convincingly proved. He has also submitted that the absence of viscera report can not adversely affect the prosecution case. He has relied on the judgment reported in 2006(1) P.L.J.R. 230 S.C.(Taiyab Khan & Ors. Vs. State of Bihar(Now Jharkhand)paragraph 3). He has lastly submitted that non-examination of some of the witnesses will not adversely affect the prosecution case. In his submission, the reliability of the prosecution witnesses has to be assessed. He has further relied on the judgment reported in 2003(4) P.L.J.R. S.C. 224(Ramanand Yadav Vs. Prabhu Nath Jha & Ors.paragraph 15).

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19. We have perused the materials on record and considered the submissions of learned counsel for the parties. It has first of all to be determined whether or not Sheela Kumari had died

because of poisoning at the hands of the appellant. The un-disputed position is that the appellant and Sheela Kumari were husband and wife, and were married about 6-7 years ago. Roksadi had taken place about one year after the wedding. P.W.1 (Baleshwar Prasad) is father, P.W.2 (Dhaneshwar Prasad) is grand-father, P.W.3 (Ram Kumar) and P.W.4 (Ashok Kumar) are full brothers of the deceased. They are, therefore, expected to be aware of the inner details and the marital life of the couple. The testimony of P.W.3 and P.W.4 would be particularly valuable in the present case, being full brothers are normally very close to their sisters emotionally, there being no generation gap, have been visiting her sister regularly. They have consistently deposed that the appellant had been demanding motor cycle from the in-laws ever since the wedding had taken place. They were unable to provide the same because of their indigent circumstance. On account of failure of Sasural people to provide the motor cycle, the appellant had started severely ill-treating Sheela Kumari. He had started regularly beating up him. The witnesses have also stated that she was condemned to the drudgery of the entire house-hold affairs inside the house as well as outside. P.Ws. 3 and 4 are full brothers and younger to Sheela Kumari and have been regularly going over to her Sasrural. P.W.3 being

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younger, was a more regular visitor. They have consistently deposed that on every visit to her sister's place, she used to complain to them of the barbarian treatment meted out to her at the hands of the appellant. She would also request her brothers to convey to their father to provide a motor cycle failing which she may loose her life. P.Ws.3 and 4 have also consistently deposed that the appellant was maintaining the kept woman some-where else and had been providing her with money by selling his lands. Sheela was objecting to the same. To crown it all, P.Ws. 3 and 4 have further deposed that Sheela Kumari used to tell them during the course of every visit that he had developed criminal bent of mind, criminals armed with guns and rifles used to visit their residence in the dead hour of the night, Krishna Singh alongwith the visiting criminals used to go away, and he would return early in the morning. All these were conveyed by P.Ws.3 and 4 to P.Ws.1 and 2, who have also supported the evidence of P.Ws. 3 and 4.

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20. It thus appears on a critical appraisal of the evidence on record that the appellant had developed criminal bent of mind, had been consisistently demanding motor cycle by way of dowry from Sasural people and on account of failure to deliver the same had started severely ill treating

and beating up his wife. In spite of 6-7 years of marriage, the couple did not sire a child which also adversely affected their marital relationship. We are, therefore, convinced that ever since his marriage, enough of venom had been built up him to effectively take care of his wife. The motive on the part of the appellant to do away with the life of Sheela Kumari has, therefore, been clearly established.

21. P.W.4 (Ashok Singh) full brother of Sheela Kumari, was, at the time of the occurrence, a college going student. He has deposed to the effect that on 24.9.1986, he was informed by a boy of Village Asrafganj(the appellant's village home) in the college that poison has been administered to Sheela Kumari and had been taken to Patna for treatment. He had immediately informed P.W.1 (Baleshwar Prasad, his father) of the same who rushed to Nalanda Medical College and Hospital, Patna. This part of the prosecution case has been fully supported by P.Ws. 1, 2 and 3. P.W.7 (Chandrika Prasad) has repeatedly stated in his deposition that the appellant alongwith others had taken Sheela Kumari on 24.9.1996 to Village Barni and from there by bus to Nalanda Medical College and Hospital. He has also repeatedly stated that she was consistently vomiting on way to Patna.

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22. Ext.4 is Entry No.1826 in the Medical Indoor Register, Emergency Ward, of Nalanda Medical College & Hospital. The same has been proved by P.w.6(Rajendra Sharma), the ward attendant of the Hospital. Ext.4 forms part of the same. The same reads as follows:-

"1826- Sheela Devi 30 yrs. HF C/) Vinay Singh Asrafganj, Dhanarua, Patna - Poisoning."

This document comes from proper custody, has been proved by an appropriate person who is expected to be conversant with the same and was duly authorized to produce and prove the same. Ext.4. was admitted into evidence without objection. The contents of the same, therefore, go un-challenged. It is manifest on a plain reading of Ext.4 that Sheela kumari was admitted to emergency medical ward of Nalanda Medical College and Hospital and was taken to the hospital during the night intervening 23/24.9.1986 on account of poisoning. She was admitted in the unit of Dr. D.C.P. Sinha. This was followed by the evidence of P.W.1 who had reached there and found the dead body lying on the hospital Verandah, and a police functionary as well as Jugeshwar Prasad, brother of the appellant were standing there. It is further relevant to state that P.W.1 had further deposed to the effect that as soon as he reached the hospital and sighted the appellant

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standing alongwith others, they took to their heels were not to be seen at all, and were not present at the time of cremation. He has further deposed to the effect that post-mortem was thereafter conducted. P.Ws.1, 2 and 4 have consistently deposed that they were present in the hospital when the post-mortem was being conducted. They have further stated that, after conclusion of the post-mortem, the dead body was handed over to the Naihar people of the deceased. This adds to the culpability of the appellant because the established custom in this part of the country is that the dead body of the deceased is invariably received by her Sasural people including the husband. The prosecution witnesses have further deposed that her Naihar people had soon thereafter cremated her on the bank of river Ganga in Patna at Gulabi Ghat.

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23. Before we consider the post-mortem report we must deal with the objection raised by the learned counsel for the appellant that the same not having been proved by the Doctor who conducted the post-mortem is inadmissible in evidence. Learned counsel for the appellant has relied on the provisions of section 45 of the Evidence Act which is reproduced hereinbelow for the facility of quick reference:

> "45. Opinions of experts.- When the Court has to

> form an opinion upon a point of foreign law or of science or art, or as identity of handwriting (or finger impressions), the opinions upon that point of persons specially skilled in such foreign law, science or art, (or in questions as to identity of handwriting) (or finger impressions) are relevant facts.
>
> Such persons are called experts."

It is manifest that the same deals with opinion of experts. It appears to us that an expert's opinion is needed to prove a certain issue which falls within the domain of his expertise. It further appears to us that the post-mortem was conducted by the Doctor in Nalanda Medical College & Hospital soon after demise of Sheela Kumari, the report has been proved by a lab technician and has been marked Ext.3. The same was included in the list of exhibits on behalf of the prosecution and was admitted into evidence without objection. It further appears to us that P.W.5, a lab technician who proved Ext.3, was present at the time of post-mortem. It was part of his duty to be present at the time of post- mortem. The same, therefore, comes from proper custody, was deputed by an appropriate authority to produce the same and prove it in court. We are further of the view that the issue is covered by the provisions of section 294 of the Code of Criminal Procedure which is reproduced hereinbelow for the facility of quick reference:-

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> "294. No formal proof of certain documents.- (1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.
> (2) The list of documents shall be in such form as may be prescribed by the State Government.
> (3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed.
> Provided that the Court may, in its discretion, require such signature to be proved."

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24. Learned Public Prosecutor has relied on the judgment reported in the case of P.C. Purrushothama Reddiar (supra), the relevant portion of which is reproduced hereinbelow for the facility of quick reference:

> "Before leaving this case it is necessary to refer to one of the contentions taken by Mr. Ramamurthi, learned Counsel for the respondent. He contended that the police reports referred to earlier are inadmissible in evidence as the Head-constables who covered those meetings have not been examined in the case. Those reports were marked without any objection. Hence it is not open to the respondent now to object to their admissibility-see Bhagat Ram V. Khetu Ram and anr([1]).
> It was next urged that even if the reports in question

> are admissible, we cannot look into the contents of those documents. This contention is again unacceptable. Once a document is properly admitted, the contents of that document are also admitted in evidence though those contents may not be conclusive evidence."

P.W.5 has also deposed to the effect that the post-mortem was conducted by Doctor Rajeshwar Sinha, Tutor in the Department of Forensic Medicine, left for United Kingdom in August, 1987, and there is not likelihood of his returning soon.. We are, therefore, of the view that the objection as to the admissibility of Ext.4, the post-mortem report of Sheela Kumari, is unsustainable. We must hasten to add that the question of adequacy of evidence is yet to be examined.

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25. We now revert to the medical condition. P.w.7 has repeatedly stated in his deposition that he had found during the course of investigation that Sheela Kumari on way to Nalanda Medical College and Hospital via Barni was vomiting. This was a symptom of poisoning. It is manifest from Ext.4 that she was admitted to the emergency ward of Nalanda Medical College and Hospital for the treatment of poisoning. Ext 3(the post-mortem report) reads as follows:-

> "Performed post mortem examination of the deceased Sheela Devi, 25 yrs, and found the following:-

(1) Cyanosis of nail beds of the fingers (2) A tatoo mark on the front of right forearm (3) No external signs of injury or violence.

On dissection and internal examination of the thoracoabd cavity:- all the internal organs, viz, heart, lungs, liver, kidneys, stomach and intestine, were markedly congested. Heart was dilated, the left chambers of the heart contained 10 c.c of dark, fluid blood, while the right chambers contains 15-20 c.c. of dark, fluid blood, stomach contained 4-5 oz yellour coloured fluid, which had a scented smell. Track was congested. Bladder empty. Genital organs were normal.

On opening up of the skull:- Meninges and brain, hyperace.

The following viscera were preserved for chemical analysis (1) Stomach with & contents (2) Portion of liver (3) Portion of (4) Portion of lungs (5) Portion of heart (6) Whole left kid.

Cause of death :- In my opinion, asphyxia due to poisoning. However the exact nature of poison can be ascertained only after chemical ex PM interval. Within 24 hrs of hoilding of PM Examination.

Rajesh Singh,

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Tutor Forensic Medic..M.C.H.
24.9.86”

We are thus convinced on a perusal of Exts. 3 and 4, read with the deposition of P.W.7, that Sheela Kumari was poisoned to death.

26. This does not conclude the case. We are yet to determine whether she was poisoned to death by the appellant. Law is well settled that, in a situation like the present one where the wife was in the custody and possession of her husband, it is incumbent upon to him to explain the reason or the circumstances leading to her death. The defence has not examined any witness to discharge their onus. In view of the strong and protracted, firmly entrenched motive on the part of the appellant to kill Sheela Kumari for non-supply of motor-cycle by way of dowry alongwith her resistance to his extra-marital affairs, that the appellant had administered poison to her. This has to be read with her letters to her father which have been proved by P.Ws. 3 and 4. They are full brothers of the deceased and, in a situation of un-told suffering to the sister, have the natural propensity to bring them close. P.Ws.3 and 4 have consistently deposed that they have been regular visitor to her sister’s Sasural, P.W.3 being younger was visiting her moreoften, she had on every occasion of the visit of her two brothers informed them of the in-human treatment meted out to her as a

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consequence of non-supply of the motor cycle and her resistance to her immoral activities. The three letters clearly are in same hand writing ,same style, and language. The father or mother has been addressed in identical terms in the three letters. All the three letters start with the expression " रामजी श्री पूजनीय माताजी चरन छुकर प्रणाम " or " *पूजनीय पिताजी चरन छूकर प्रणाम*" She consistently pleads in her letters with utter helpless-ness, and begging for her life, to provide motor cycle to her husband failing which she will loose her life. Ext. 2/2 is dated 22.9.1986, written 2-3 days prior to the occurrence, which is to the same effect as the deposition of P.W.3 who has proved the same and has stated in his deposition that " उसके मृत्यु के दो–तीन दिन पहले मैं उसके घर असरफगंज गया था ..... मैंने उस पत्र को पिताजी को दे दिया । यही वह चिट्ठी है जिसे बहन ने पिताजी के नाम दिया था । (प्रदर्श 2/2 अंकित) "

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26.1) All this has to be read with his criminal bent of mind completely eroding his qualms.

26.2) We are thus convinced that the appellant had administered poison to Sheela kumari.

27. Learned counsel for the appellant has also raised the contention that the Fardbeyan was lodged belatedly, giving enough time to cook up a false case against the appellant and has in the same vein has submitted that it was forwarded to the court equally belatedly. On a consideration of the perusal

of materials on record, we find that it was initially recorded as U.D. case at the instance of the appellant. The dead body after post-mortem was handed over to her Naihar people on 24.9.1986. The very opening sentence of Fardbeyan shows that he has first of all come to learn about his daughter illness on 24.9.1986 at 8 A.M. The same was recorded in Alamganj police station on 25.9.1996. We do not find any fault with it, nor do we suspect as to why the same was recorded with Alamganj police station. Naland Medical College and Hospital falls within the jurisdiction of Alamganj police station. However, in view of the position that the appellant resides within the jurisdiction of Dhanrua police station. Alamganj police station had forwarded the farfdbeyan to Dhanarua police station. P.W.7 has stated in his deposition that he received Fardbeyan on 30.9.1986 ,and he had promptly registered as Dhanarua P.S. Case No.120 of 1986 on 30.6.1986 at 6 P.M. The same was promptly forwarded to the court. We are, therefore, convinced that the Fardbeyan was recorded in time. We see no delay in this connection at any stage. The contention is rejected.

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28. In the result, this appeal is dismissed and the impugned judgment is hereby up-held. The appellant’s conviction under section 302 IPC is maintained. The sentence of rigorous imprisonment

for life is also upheld. His bail bonds are cancelled. He is hereby directed to surrender before the learned trial court forthwith for serving out the remaining period of sentence.

(Sudhir Kumar Katriar, J.)

(Samarendra Pratap Singh, J.)

High Court Patna,
Dated, 24th July, 2008.
Vinay/ A.F.R.

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